

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0625

MANDATORY PENALTY
IN THE MATTER OF

RIVIERA WEST MUTUAL WATER COMPANY
DOMESTIC WATER TREATMENT PLANT
LAKE COUNTY

This Complaint is issued to the Riviera West Mutual Water Company Domestic Water Treatment Plant (hereafter Discharger) pursuant to California Water Code (CWC) section 13385, which authorizes the imposition of Administrative Civil Liability, CWC section 13323, which authorizes the Executive Officer to issue this Complaint, and CWC section 7, which authorizes the delegation of the Executive Officer's authority to a deputy, in this case the Assistant Executive Officer. This Complaint is based on findings that the Discharger violated provisions of Waste Discharge Requirements (WDRs) Order 96-099 and R5-2002-0130 (NPDES No. CA0083925).

The Assistant Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board) finds the following:

1. The Discharger owns and operates a domestic water treatment plant (WTP), which provides potable water for the Riviera West area of Lake County near Konocti Bay. Supernatant from filter backwash water is decanted from the backwash tank and intermittently discharged to Clear Lake.
2. On 3 May 1996, the Central Valley Water Board issued WDRs Order 96-099 (NPDES CA0083925) to regulate wastewater discharges from the Discharger's WTP to Clear Lake. On 19 July 2002, the Central Valley Water Board issued WDRs Order R5-2002-0130 which contained new regulations and rescinded Order 96-099. The WDRs include effluent limitations and other requirements, and includes a Monitoring and Reporting Program that requires the submittal of periodic monitoring reports. These monitoring reports are designed to ensure compliance with effluent limitations contained in waste discharge requirements.
3. On 19 July 2002, the Central Valley Water Board also issued Cease and Desist Order (CDO) R5-2002-0131 requiring the Discharger to cease discharging contrary to WDRs Order R5-2002-0130. The CDO provided a time schedule until 19 July 2004 for the Discharger to comply with effluent limitations for chlorine, EC, TDS, and aluminum.
4. The CDO further contained findings that the Discharger had not submitted any of the monitoring reports required under the previous WDRs. As described in the CDO, for the period from June 1996 (when the requirements of Order No. 96-099 were effective) through May 2002 (when the CDO was drafted) the Discharger: (a) failed to submit 23 of the 23 required quarterly reports; (b) failed to submit the results of 308 of the 308 required weekly effluent turbidity, pH, and chlorine residual samples; (c) failed to submit the results

of 2,160 of the required 2,160 daily effluent flow samples; and (d) failed to submit the results of 308 of the required 308 weekly raw water turbidity, pH, and temperature samples. The CDO required the Discharger to comply immediately with requirements in Monitoring and Reporting Program R5-2002-0130, and listed the potential civil liabilities that would accrue under CWC sections 13383 and 13268 if the Discharger failed to submit monitoring reports.

5. On 1 March 2004, the Discharger submitted one incomplete report for the period of December 2003 and January 2004. In a letter dated 9 January 2004, the Discharger's consultant indicated that the Discharger was concerned about the CDO and expressed the Discharger's intention to comply with all testing and reporting requirements set in the WDRs. However, the Discharger has not submitted any other monitoring reports. The Discharger has not submitted monthly monitoring reports for the period of July 2002 through November 2003 and February 2004 through June 2008. Due to the Discharger's failure to submit reports, Central Valley Water Board staff is unable to determine whether the Discharger has discharged in compliance with the effluent limitations contained in its permits.
6. On 13 July 2007, Central Valley Water Board staff sent the Discharger a Notice of Violation (NOV), by certified mail, regarding the failure to submit monitoring reports. The NOV stated that the Discharger had accrued Mandatory Minimum Penalties (MMPs) of \$3,000 per month per report for every month it did not submit monitoring reports. The NOV required the Discharger to submit the required monitoring reports. The Discharger did not respond.
7. On 25 June 2008, Central Valley Water Board staff conducted a compliance inspection of the facility. During the inspection, the Discharger's representative stated that he was not aware of any requirement to submit monitoring reports. Staff were informed that wastewater is now discharged to land. However, the current land disposal area slopes towards a drainage ditch, which flows directly into Clear Lake. Photographs provided by the Discharger appear to show a sprinkler head within feet of a drainage ditch. In addition, it does not appear that the spray area is bermed or has any other physical features to prevent drainage into Clear Lake. It also does not appear that the Discharger has capacity to store the wastewater during periods of extended rain, or can prevent wastewater from running off of the land application area into Clear Lake during periods of rain or when the land is saturated.
8. On 29 July 2008, Central Valley Water Board staff sent the Discharger a Notice of Violation and a draft Record of Violations by certified mail. The document stated that the Discharger is subject to over \$3 million in MMPs, and requested that the Discharger review the listing of violations for accuracy and provide comments. The certified mail receipt shows that the Discharger received the document, but the Discharger did not respond.
9. CWC sections 13385(h) and (i) require the assessment of mandatory penalties and state, in part, the following:

CWC section 13385(h)(1) states,

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each serious violation.

CWC section 13385 (h)(2) states,

For the purposes of this section, a "serious violation" means any waste discharge that violates the effluent limitations contained in the applicable waste discharge requirements for a Group II pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 20 percent or more or for a Group I pollutant, as specified in Appendix A to Section 123.45 of Title 40 of the Code of Federal Regulations, by 40 percent or more.

CWC section 13385(i)(1) states,

Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (l), a mandatory minimum penalty of three thousand dollars (\$3,000) shall be assessed for each violation whenever the person does any of the following four or more times in any period of six consecutive months, except that the requirement to assess the mandatory minimum penalty shall not be applicable to the first three violations:

- A) Violates a waste discharge requirement effluent limitation.
- B) Fails to file a report pursuant to Section 13260.
- C) Files an incomplete report pursuant to Section 13260.
- D) Violates a toxicity effluent limitation contained in the applicable waste discharge requirements where the waste discharge requirements do not contain pollutant-specific effluent limitations for toxic pollutants.

10. CWC section 13385.1(a)(1) applies to violations that occur after 1 January 2004, and states,

For the purposes of subdivision (h) of Section 13385, a "serious violation" also means a failure to file a discharge monitoring report required pursuant to Section 13383 for each complete period of 30 days following the deadline for submitting the report, if the report is designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations.

Although the Discharger has only submitted one monitoring report since 1996, this Complaint only assess mandatory minimum penalties for the failure to submit monitoring reports since 1 January 2004, the date that CWC section 13385.1(a)(1) took effect.

11. CWC section 13323 states, in part:

Any executive officer of a regional board may issue a complaint to any person on whom administrative civil liability may be imposed pursuant to this article. The complaint shall allege the act or failure to act that constitutes a violation of law, the provision authorizing civil liability to be imposed pursuant to this article, and the proposed civil liability.

12. WDRs Order R5-2002-0130 Effluent Limitations B.1. states: “*Effluent shall not exceed the following limits.*”

<u>Constituents</u>	<u>Units</u>	<u>Monthly Average</u>	<u>Weekly Average</u>	<u>4-Day Average</u>	<u>1-Hour Average</u>	<u>Daily Maximum</u>
Bromodichloromethane	µg/L	0.56	--	--	--	--

13. WDRs Order R5-2002-0130 Effluent Limitations B.4. states: “*The discharge shall not have a pH less than 6.5 nor greater than 8.5.*”
14. WDRs Order R5-2002-0130 Provision E.11. states, in part: “*The Discharger shall comply with Monitoring and Reporting Program No. R5-2002-0130...*” Monitoring and Reporting Program (MRP) R5-2002-0130 includes requirements to monitor the raw water supply, receiving water, effluent, three species chronic toxicity, and sludge, and to submit the results on a monthly basis, by the first day of the second month following sample collection.
15. CWC section 13385.1 took effect on 1 January 2004. This provision requires that the Board assess penalties for the failure to submit monitoring reports. The Discharger committed 1,314 serious violations for not submitting monitoring reports as required by WDRs Order R5-2002-0130 during the period beginning 1 January 2004 and ending 30 June 2007. A detailed list of the cited monitoring report violations is included in Attachment A, a part of this Complaint. Because WDRs Order R5-2002-0130 expired on 1 July 2007, and was not administratively extended, the last required monitoring report was for June 2007. Therefore, the monitoring report violations do not extend beyond that point.
16. The monitoring report violations meet the definition of serious, as found in CWC section 13385.1(a)(1), because the reports were designed to ensure compliance with limitations contained in waste discharge requirements that contain effluent limitations. The mandatory minimum penalty for these serious violations is **three million nine hundred forty-two thousand dollars (\$3,942,000)**.
17. According to the Discharger’s one self-monitoring report, the Discharger committed one (1) serious Group II violation of the above effluent limitations contained in Orders 96-099 and R5-2002-0130 during the period beginning 1 January 2000 and ending 1 July 2007, when the permit expired. The violation is defined as serious because the measured concentration of a Group II constituent exceeded maximum prescribed levels by more than 20 percent. The mandatory minimum penalty for this serious violation is **three thousand dollars (\$3,000)**.
18. According to the Discharger’s one self-monitoring report, the Discharger committed three (3) non-serious violations of the above effluent limitations contained in WDRs Orders 96-099 and R5-2002-0130 during the period beginning 1 January 2000 and ending 1 July 2007, when the permit expired. Non-serious violations are subject to mandatory penalties under CWC section 13385(i)(1) only if they are preceded by three or more

similar violations within a six-month period. Because of the non-submittal of monitoring reports, it is not possible to determine whether additional non-serious violations occurred in the previous six months. Therefore, no penalties were assessed for these three non-serious violations.

19. The total amount of the mandatory penalties assessed for the cited effluent violations is **three million nine hundred forty-five thousand dollars (\$3,945,000)**. A detailed list of the cited effluent and reporting violations is included in Attachment A, a part of this Complaint.
20. Issuance of this Administrative Civil Liability Complaint to enforce CWC Division 7, Chapter 5.5 is exempt from the provisions of the California Environmental Quality Act (Pub. Resources Code section 21000 et seq.), in accordance with California Code of Regulations, title 14, section 15321(a)(2).

THE RIVIERA WEST MUTUAL WATER COMPANY DOMESTIC WATER TREATMENT PLANT IS HEREBY GIVEN NOTICE THAT:

1. The Assistant Executive Officer of the Central Valley Water Board proposes that the Discharger be assessed an Administrative Civil Liability in the amount of **three million nine hundred forty-five thousand dollars (\$3,945,000)**.
2. A hearing on this matter will be held at the Central Valley Water Board meeting scheduled on **5/6 February 2009**, unless the Discharger does either of the following by **21 December 2008**:
 - a) Waives the hearing by completing the attached form (checking off the box next to item #4) and returning it to the Central Valley Water Board, along with payment for the proposed civil liability of **three million nine hundred forty-five thousand dollars (\$3,945,000)**; or
 - b) Agrees to enter into settlement discussions with the Central Valley Water Board and requests that any hearing on the matter be delayed by signing the enclosed waiver (checking off the box next to item #5) and returning it to the Central Valley Water Board along with a letter describing the issues to be discussed.
3. If a hearing on this matter is held, the Central Valley Water Board will consider whether to affirm, reject, or modify the proposed Administrative Civil Liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

JACK E. DEL CONTE, Assistant Executive Officer

21 November 2008

**WAIVER OF 90-DAY HEARING REQUIREMENT FOR
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

1. I am duly authorized to represent Riviera West Mutual Water Company Domestic Water Treatment Plant (hereinafter "Discharger") in connection with Administrative Civil Liability Complaint R5-2008-0625 (hereinafter the "Complaint");
 2. I am informed that California Water Code section 13323, subdivision (b), states that, "a hearing before the regional board shall be conducted within 90 days after the party has been served" with the Complaint;
 3. I hereby waive any right the Discharger may have to a hearing before the Central Valley Regional Water Quality Control Board (Central Valley Water Board) within ninety (90) days of service of the Complaint; and
 4. ☐ **(Check here if the Discharger will waive the hearing requirement and will pay the fine)**
 - a. I certify that the Discharger will remit payment for the civil liability imposed in the amount of **three million nine hundred forty-five thousand dollars (\$3,945,000)** by check, which contains a reference to "ACL Complaint R5-2008-0625" and is made payable to the "*Waste Discharge Permit Fund*". Payment must be received by the Central Valley Water Board by **21 December 2008** or this matter will be placed on the Central Valley Water Board's agenda for adoption at the **5/6 February 2009** Central Valley Water Board meeting.
 - b. I understand the payment of the above amount constitutes a settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period mandated by Federal regulations (40 CFR 123.27) expires. Should the Central Valley Water Board receive new information or comments during this comment period, the Central Valley Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. New information or comments include those submitted by personnel of the Central Valley Water Board who are not associated with the enforcement team's issuance of the Complaint.
 - c. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Discharger to further enforcement, including additional civil liability.
- or-**
5. ☐ **(Check here if the Discharger will waive the 90-day hearing requirement, but will not pay at the current time. The Central Valley Water Board must receive information from the Discharger indicating a controversy regarding the assessed penalty at the time this waiver is submitted, or the waiver may not be accepted.)** I certify that the Discharger will promptly engage the Central Valley Water Board staff in discussions to resolve the outstanding violation(s). By checking this box, the Discharger is *not* waiving its right to a hearing on this matter. By checking this box, the Discharger requests that the Central Valley Water Board delay the hearing so that the Discharger and Central Valley Water Board staff can discuss settlement. It remains within the discretion of the Central Valley Water Board to agree to delay the hearing. A hearing on the matter may be held before the Central Valley Water Board if these discussions do not resolve the liability proposed in the Complaint. The Discharger agrees that this hearing may be held after the 90-day period referenced in California Water Code section 13323 has elapsed.
 6. If a hearing on this matter is held, the Regional Water Board will consider whether to issue, reject, or modify the proposed Administrative Civil Liability Order, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

(Print Name and Title)

(Signature)

(Date)

ATTACHMENT A
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT R5-2008-0625

Riviera West Mutual Water Company
Domestic Water Treatment Plant

RECORD OF VIOLATIONS (1 January 2000 – 1 July 2007, when permit expired) MANDATORY PENALTIES
(Data reported under Monitoring and Reporting Program R5-2002-0130)
Case file and data reviewed through 30 June 2008

TABLE 1: MANDATORY PENALTIES FOR FAILURE TO SUBMIT REPORTS

	<u>SMR</u>	<u>Due Date</u>	<u>Months Late</u>	<u>MMPs Accrued</u>	<u>Remarks</u>
1	Feb-04	1-Apr-04	50	\$150,000	1
2	Mar-04	1-May-04	49	\$147,000	1
3	Apr-04	1-Jun-04	48	\$144,000	1
4	May-04	1-Jul-04	47	\$141,000	1
5	Jun-04	1-Aug-04	46	\$138,000	1
6	Jul-04	1-Sep-04	45	\$135,000	1
7	Aug-04	1-Oct-04	44	\$132,000	1
8	Sep-04	1-Nov-04	43	\$129,000	1
9	Oct-04	1-Dec-04	42	\$126,000	1
10	Nov-04	1-Jan-05	41	\$123,000	1
11	Dec-04	1-Feb-05	40	\$120,000	1
12	2004 Annual Report	1-Feb-05	40	\$120,000	1
13	Jan-05	1-Mar-05	39	\$117,000	1
14	Feb-05	1-Apr-05	38	\$114,000	1
15	Mar-05	1-May-05	37	\$111,000	1
16	Apr-05	1-Jun-05	36	\$108,000	1
17	May-05	1-Jul-05	35	\$105,000	1
18	Jun-05	1-Aug-05	34	\$102,000	1
19	Jul-05	1-Sep-05	33	\$99,000	1
20	Aug-05	1-Oct-05	32	\$96,000	1
21	Sep-05	1-Nov-05	31	\$93,000	1
22	Oct-05	1-Dec-05	30	\$90,000	1
23	Nov-05	1-Jan-06	29	\$87,000	1
24	Dec-05	1-Feb-06	28	\$84,000	1
25	2005 Annual Report	1-Feb-06	28	\$84,000	1
26	Jan-06	1-Mar-06	27	\$81,000	1
27	Feb-06	1-Apr-06	26	\$78,000	1
28	Mar-06	1-May-06	25	\$75,000	1
29	Apr-06	1-Jun-06	24	\$72,000	1
30	May-06	1-Jul-06	23	\$69,000	1
31	Jun-06	1-Aug-06	22	\$66,000	1
32	Jul-06	1-Sep-06	21	\$63,000	1
33	Aug-06	1-Oct-06	20	\$60,000	1
34	Sep-06	1-Nov-06	19	\$57,000	1
35	Oct-06	1-Dec-06	18	\$54,000	1
36	Nov-06	1-Jan-07	17	\$51,000	1
37	Dec-06	1-Feb-07	16	\$48,000	1
38	2006 Annual Report	1-Feb-07	16	\$48,000	1

	<u>SMR</u>	<u>Due Date</u>	<u>Months Late</u>	<u>MMPs Accrued</u>	<u>Remarks</u>
39	Jan-07	1-Mar-07	15	\$45,000	1
40	Feb-07	1-Apr-07	14	\$42,000	1
41	Mar-07	1-May-07	13	\$39,000	1
42	Apr-07	1-Jun-07	12	\$36,000	1
43	May-07	1-Jul-07	11	\$33,000	1
44	Jun-07	1-Aug-07	10	\$30,000	1

Remarks:

1. Serious Violation: Failure to file a discharge monitoring report for each complete period of 30 days following the deadline for submitting the report. The period ends in June 2007, when the WDRs expired.

VIOLATIONS AS OF: 6/30/2008
Group I Serious Violations: 1,314
Total Violations Subject to MPs: 1,314

Mandatory Minimum Penalty = (1,314 cumulative month violations) x \$3,000 = \$3,942,000

TABLE 2: MANDATORY PENALTIES FOR EFFLUENT LIMITATIONS VIOLATIONS

	<u>Date</u>	<u>Violation Type</u>	<u>Units</u>	<u>Limit</u>	<u>Measure</u> <u>d</u>	<u>Period Type</u>	<u>Remarks</u>
1	23-Dec-03	pH	pH Units	6.5	6.4	Instantaneous	3
2	14-Jan-04	pH	pH Units	6.5	6.2	Instantaneous	3
3	21-Jan-04	pH	pH Units	6.5	6.4	Instantaneous	3
4	31-Jan-04	Bromodichloromethane	µg/L	0.56	5.62	Daily	2

Remarks:

1. Serious Violation: For Group I pollutants that exceed the effluent limitation by 40 percent or more.
2. Serious Violation: For Group II pollutants that exceed the effluent limitation by 20 percent or more.
3. Non-serious violations falls within the first three violations in a six-month period, thus is exempt.

VIOLATIONS AS OF: 6/30/2008
Group I Serious Violations: 0
Group II Serious Violations: 1
Non-Serious Exempt from MPs: 3
Non-serious Violations Subject to MPs: 0
Total Violations Subject to MPs: 1

Mandatory Minimum Penalty = (1 Serious Violations) x \$3,000 = \$3,000